# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 1114 of 2006

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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**KANCHAN NIVAS CO-OP HOSG.SOC. LTD - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR LR PATHAN for Petitioner(s) : 1,MR MOHD.HANIF SHAIKH for Petitioner(s) : 1,
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 24/01/2006**

**ORAL JUDGMENT**

1. Rule. Ms.Archana Raval, learned AGP waives service of rule on behalf of the respondent. With the consent of the learned advocates for the parties, the matter is heard finally today.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the

Deputy Collector, Stamp Duty Valuation, Valsad dated 26.5.2000 passed under Section-32-A of the Bombay Stamp Act with respect to the Document Registration No.1999 dated 14.10.97 presented before the Sub-Registrar, Valsad as well as the order / communication of the Deputy Collector, Valsad dated 30.11.2005 on the basis of the instructions given by the Chief Revenue Controlling Authority that as the appeal preferred by the petitioner under Section-32-B of the Act is not filed within a period of 90 days, the delay is not condoned.

3. It is the contention on behalf of the petitioner that the petitioner entered into sale deed on 14.10.97 and the same was presented before the Sub-Registrar, Valsad on 14.10.1997. However, the petitioner was not returned the original sale deed. It is the contention on behalf of the petitioner that when recently the petitioner wanted to get loan from the Bank, copy of the original sale deed was required and at that time, the petitioner was informed that the order is already passed against the petitioner dated 26.5.2000 by the Deputy Collector, Stamp Duty

Valuation, Valsad under Section-32-A of the Bombay Stamp Act, by which, the petitioner is required to pay the amount of Rs.94,708 and a sum of Rs.250/- towards penalty and in all Rs.94,958/- towards the deficit stamp duty. It is the case on behalf of the petitioner that immediately the petitioner applied for certified copy of the said order and the petitioner received the same on 11.4.2005 and the petitioner preferred the appeal before the Chief Revenue Controlling Authority under Section-32(B) of the Act on 12.4.2005 and the petitioner came to be informed by the aforesaid impugned communication dated 30.11.2005 by the Deputy Collector that the appeal preferred by the petitioner is time barred and the same is filed. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present special civil application. It appears from the record that immediately the petitioner challenged the same before the Chief Revenue Controlling Authority by way of preferring an appeal. However, the petitioner is informed that as the petitioner has preferred the appeal after a period of 90 days, the appeal of the petitioner will not be entertained as

the same is barred by the limitation.

4. Shri L.R.Pathan, learned advocate appearing on behalf of the petitioner has also submitted that the petitioner is ready and willing to deposit 25 % of the amount as per the order passed by the Deputy Collector, Stamp Duty Valuation, Valsad passed under Section-32-A of the Bombay Stamp Act as pre-deposit as required under Section-32-B of the Act while preferring the appeal.

5. As it is the contention on behalf of the petitioner that the petitioner came to know as to impugned order at the time when the petitioner approached the authority to get copy of the sale deed as he wanted to avail loan from the Bank and copy of the original sale deed was required and at that time, the petitioner was informed that the order is already passed against the petitioner dated 26.5.2000 by the Deputy Collector, Stamp Duty Valuation, Valsad under Section-32-A of the Bombay Stamp Act, by which, the petitioner is required to pay the amount of Rs.94,708 and a sum of Rs.250/- towards penalty and in all

Rs.94,958/- towards the deficit stamp duty and the petitioner immediately applied for certified copy of the said order and on receipt of the same, the petitioner preferred an appeal before the Chief Revenue Controlling Authority and therefore, there is no delay. Whether the order dated 26.5.2000 passed by the Deputy Collector, Stamp Duty Valuation, Valsad passed under Section-32-A was served upon the petitioner at any point of time earlier and/or prior to the date according to the petitioner, can be confirmed by the Chief Revenue Controlling Authority which is revisional and / or appellate authority after calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Valsad who has passed the impugned order and after considering the record, it can be verified that whether the impugned order was served upon the petitioner earlier or not. Under the circumstances, the Chief Revenue Controlling Authority / appellate authority is directed to consider the same after calling for record and proceedings from the office of the Deputy Collector, Stamp Duty Valuation, Valsad who has passed the impugned order dated 26.5.2000

and if ultimately it is found that the order was not served upon the petitioner till his knowledge and / or at any point of time earlier, then, the appellate authority may consider the said appeal in accordance with law and on merits. If the appeal is found to have been preferred within a period of limitation on receipt of the copy of the order, the appeal may be decided on merits after complying with necessary requirements as required under Section-32-B of the Bombay Stamp Act, that is, on deposit of 25 % of the amount as pre-deposit. It is however clarified that this Court has not expressed any opinion on merits with regard to contention of delay and / or any other order, but this has simply directed the Chief Revenue Controlling Authority to verify the factum of controversy, whether the order passed by the Deputy Collector, Stamp Duty Valuation, Valsad dated 26.5.2000 was served upon the petitioner prior to 16.12.2005 or not, and to consider the same in light of the observations made hereinabove.

6. With aforesaid observations and directions, the present Special Civil Application is disposed of

accordingly.

7. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

Direct Service is permitted.

[ M.R.Shah, J.]

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